IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1233 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALSUKHBHAI SOMNATH PANCHAL

Versus

KIRTIDEV CHINUBHAI DECD.THRO HEIRS

Appearance:

MR PV NANAVATI for the Petitioner.

MR NK MAJMUDAR for the Respondent.

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 15/10/2003

ORAL JUDGEMENT

The respondent-plaintiff filed a suit against the petitioner-defendant for recovery of possession and arrears of rent including municipal taxes, education cess alongwith notice charges, in all for Rs.

1770/- stating that the defendant was previously in possession of two premises, one with rent of Rs. 3.19 ps. and other at Rs.21.50 ps. per month. The premises which was rented for Rs.3.19 ps. was used for the purpose of storing goods as it was an open land. The other premises was a built up premises. Though the demand was made for the rent of both the premises, but the claim was restricted in respect of the constructed premises. The rent was due from 1.4.1970 and municipal taxes were also due from 1969-70. The premises was being used for manufacturing goods and the business was closed since 1970. It was also stated that in fact, the said building had fallen down and there is no roof over it and the premises cannot be used for any purpose. The defendant has shifted the factory at Mahemdabad and he does not require the suit premises. Hence, the notice was sent on 27th May, 1975 which was not complied with. Therefore, the suit was filed in the year 1975.

2. The defendant filed written statement at exh. 12 and also filed an application for fixing the standard rent. The defendant stated that he was in possession of 250 sq.yds. of land in both the premises and he was carrying on the business of mill machinery and for that purpose, he was running a factory. Out of the said land, the land admeasuring 217 sq.yds. has been acquired for widening the road and the possession of that land has already been taken on 31st March, 1970. Thus, the defendant is in possession of only 33 sq.yds. of land. Rs.21.50 ps. is not the standard rent and proportionate rent should be Rs. 3.50 ps.per month. The defendant is ready and willing to pay the rent. As there was no rent fixed, the rent is not due. The arrears of rent and taxes claimed are not due from him. For that purpose, he had filed application no. 1782 of 1975 for fixation of the standard rent in view of the acquisition of land. He denied that non-user of the premises. He also denied that the premises had remained closed. It is asserted that since only 33 sq.yds. of land had remained with him, he is not able to run his factory and he has shifted his factory to Mahemdabad under compulsion of land. He is using the remaining land of 33 sq.yds. of said premises as office. He is in need of premises and to continue his premises at Ahmedabad. He also denied bad or dilapidated condition of the premises as it has no roof as he had repaired the suit premises carrying on his office for the business.

3. After recording evidence and after hearing the arguments of the learned counsel for the parties, the trial court dismissed the suit with costs

vide its judgment and decree dated 31st March, 1980. The plaintiff landlord being aggrieved and dissatisfied by the said judgment of the trial court, preferred Civil Appeal no.326 of 1980 before the Appellate Bench of Small Cause Court, Ahmedabad. The Appellate Bench allowed the appeal setting aside the judgment and decree of the trial court directing the defendant to hand over the vacant possession of the suit premises on or before 30th September, 1984 with mesne profit at the rate of Rs. 3.50 ps. per month from the date of the suit till the delivery of possession vide its judgment and order dated 30th April, 1984. The petitioner- tenant has therefore, preferred this Revision Application against the findings recorded by the lower appellate court.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent. This Civil Revision Application is of 1984 and it arises of the original suit of the year 1975. The Appellate Bench has allowed the appeal only on the ground of non-user of the suit premises. In that respect, the finding given by the trial court is that the defendant-tenant was using the property, but the finding of the lower appellate court is that the property has not been used since 1970 and the business has been shifted to another place and that on the ground of non-user of the suit premises, the suit is decreed.

5. I have considered the reasons given by the trial court regarding non-user of the property in question. But in view of the proper appreciation of the the evidence made by the lower appellate court, the reasons given by the trial court are not sustainable and the appreciation of material and evidence on record, it clearly shows that the property has not been used for a long time after 1970 by the tenant and the finding arrived at by the lower appellate court appears to be correct one. Certain aspects have not been considered by the trial court while the lower appellate court has considered all necessary aspects regarding non-user of the property by the tenant since 1970. In view of the fact that major portion of the suit property has already been acquired for widening of the road by the concerned authority and thereafter, only small portion had remained and admittedly the factory was shifted to another place. As per the report of the Court Commissioner, the property had not been used. As such, on the basis of the evidence on record, the lower appellate court has come to the correct finding that the property in dispute has not been used since 1970. Therefore, the findings recorded by the lower appellate court are fully justified. The learned

counsel for the petitioner could not point out any illegality or infirmity committed by the lower appellate court in re-appreciation of evidence on record and arriving at the aforesaid conclusion. In view of the facts and circusmtances stated above, this Revision Application has no merits. Accordingly, it is dismissed. Rule discharged with no order as to costs. Interim relief stands vacated. The learned counsel for the petitioner states that the petitioner has died, hence this Revision Application has also abated.

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